



REMARKS

Claims 1-18 stand finally rejected under 35 U.S.C. § 102. Claims 1-18 are pending.

Applicant's Record Under § 713.04 of Telephone Interview With Examiner

Applicant's attorney thanks Examiners Smithers and Fields for their time and consideration in the Examiner-initiated telephone interview of November 10, 2004. Applicant respectfully submits the following record of that telephone interview, under M.P.E.P. § 713.04.

The following persons participated in the interview: Examiner Courtney Fields, Primary Examiner Matthew Smithers and Applicant's attorney Craig Cox. U.S. Patent Number 5,832,208 to Chen et al. was discussed, and more specifically, whether Chen et al. discloses email in the form of data packets passing over the network.

Claims 1, 3, and 6-16 are rejected under 35 U.S.C. §102(b) as being anticipated by Chen et al. (U.S. Patent No. 5,832,208).

As set forth in the Applicant's response to the February 26, 2004 Office Action, the invention claimed by the Applicant relates to a method and device for detecting and inoculating emails *as they are passing over the network*. By passing over the network the applicant means that the emails are in packetized form, being comprised of one or more packets encapsulated in the associated network protocols, such as Internet Protocol headers, and/or other network transmission protocols, and being passed between routers and switches in this packetized form. This limitation is clearly stated in Claims 1, and 10.

Applicant would refer the Examiner to page 6, lines 9-13 where the traffic passing over the network through aggregation points 60 is described as being packetized, i.e. having headers and payloads, where packets belonging to the same session constitute a traffic flow. Further, the present invention describes using information in the header of a packet to form a session id, where that session id is used to identify the traffic flow associated with that packet and subsequent packets in the same session, page 7, lines 24-31. On page 8, lines 24-27, the present invention describes maintaining state awareness across all the packets associated with a traffic flow.

As can be seen from the previous descriptions, the recitation of scanning data packets where the data packets are part of a traffic flow, require that the scanning be performed while the data is in packetized form, and while the email is being transmitted on the network.

This is clearly distinct from the software agent described in Chen et al. The agent of Chen et al. operates with mail server programs loaded on mail servers. (see, col. 5, lines 18-21; col. 5, lines 29-31; col. 6, lines 55-58). The network transmission described with respect to the present invention is shown by the lines interconnecting server 20 and workstation 30, where Chen omits the required routers and

switches that make up the network because they have no bearing on his disclosure. It is at precisely this level of the network, the one omitted by Chen as irrelevant, that the present invention operates. The agent of Chen et al. scans emails while they are stored in the email server or associated database. (col. 7, lines 10-16). Emails stored in an email server or associated database are not in packetized form as required by Claims 1-18. Similarly, the agent of Chen et al. does not scan data packets, but instead scans the email server memory or database.

As stated in the response to the February 26, 2004 Office Action, the reference to “real-time” in Chen et al. is a separate concept from the real-time described in the present invention. Real-time in Chen et al. means that the emails are scanned as soon as they are sent or received by the email server on which the agent is resident. (col. 12, lines 63-67) Real-time in the context of the present invention refers to concept of scanning the data packets at the transmission speed of the network over which the data packets are passing, in other words, not requiring that the message be taken out of its packetized form and stored before it is scanned, which is exactly what occurs with Chen et al. where the actual scanning is done by a third party anti-virus program. (col. 7, lines 31-32)

Since the agent of Chen et al. does not scan email in the form of data packets being transmitted across a network, and since this limitation is clearly set forth in Claims 1 and 10 and therefore, dependent Claims 2-9 and 11-18, Applicant respectfully asserts that Claims 1, 3, and 6-16 are not anticipated by Chen et al. and requests that the rejection by the Examiner be withdrawn.

Claim 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over Chen et al. in view of Templeton (U.S. Patent No. 6,401,210); claims 4 and 5 are rejected as being unpatentable over Chen et al. in view of Kuo et al. (U. S. Patent No. 6,230,288); and claims 17 and 18 are rejected as being unpatentable over Chen et al.

Applicant respectfully traverses the Examiner’s rejection of Claims 2, 4, 5, 17, and 18 as being unpatentable under §103(a). As the claims are all claims dependent on allowable base claims as set forth in Applicant’s arguments above, however, the Examiner’s rejections are moot and will not be specifically addressed by the Applicant.

Applicant believes in view of the foregoing amendments and arguments that the application is in condition for allowance and respectfully requests such action by the Examiner. If there are any issues, questions, or if the Examiner does not believe the application is in condition for allowance, the Examiner is invited to call the undersigned attorney at the number below.

Respectfully submitted,



Craig J. Cox

Craig J. Cox
Reg. No. 39,643

Date: November 23, 2004

Netrake Corporation
3000 Technology Drive
Suite 100
Plano, Texas 75074